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Held at Headquarters, New York,
on Wednesday, 29 March 1995, at 3 p.m.

Chairman: Mr. AGUILAR

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of the United States of America (continued) (CCPR/C/81/Add.4; HRI/CORE/1/Add.49)

1. At the invitation of the Chairman, Ms. Deer, Mr. Harper, Ms. Harris, Mr. Patrick and Mr. Shattuck (United States of America) took places at the Committee table.

2. Mr. KRETZMER said that the fact that many of the members of the United States delegation had previously been active members of non-governmental human rights organizations added to the credibility of the country's commitment to human rights. He also paid a tribute to the United States Government for working over the years to break down barriers which had at times prevented nationals of certain countries, including his own country, Israel, from participating in international bodies merely by virtue of their country of nationality.

3. Turning to the report, he associated himself with the remarks made by earlier speakers regarding the reservations, understandings and declarations of the reporting State, which reflected a philosophy underlying its accession to the Covenant, namely, that it would comply with the Covenant so long as such compliance did not require any changes in federal or state laws.

4. One category of disparities between the United States Constitution and the Covenant related to situations in which United States courts held that the Constitution did not apply to certain persons, who were therefore not subject to the usual constitutional guarantees. The situation of excludable aliens (CCPR/C/81/Add.4, paras. 326-332) was one such example. The report stated that excludable aliens held under detention could challenge the detention by invoking habeas corpus in a federal court. However, he wished to know what substantive standards were applied by the courts when dealing with such applications for habeas corpus. He also wished to know whether in such cases the courts maintained that they could not examine on substantive grounds the exclusion of an individual from the United States.

5. There was substantial information from various sources which indicated that excludable aliens being held in detention pending deportation could be held indefinitely. He requested clarification on the law and policy applicable to such persons and wondered whether there were any time-limits on such detentions. The reporting State should also indicate how many persons were currently being detained as excludable aliens and how long they had been held. He was specifically interested in learning the status of Haitians captured on the high seas.

6. With regard to the reporting State's compliance with article 10 of the Covenant, paragraphs 259-262 of the report provided details concerning the legal

and administrative arrangements and guarantees to protect the rights of prisoners. However, little was stated about the actual conditions in federal or state prisons. With respect to paragraph 260, disturbing reports had indicated that in some institutions, serious allegations of sexual abuse of women by male staff had been made and that in some cases the women had been afraid to complain out of fear of reprisals. He wished to know whether the reporting State was prepared to reconsider its attitude with respect to the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials.

7. In view of the fact that new laws were being adopted at the state and federal levels which might result in a substantial increase in the prison population, and given the current serious problem of overcrowding, he wondered whether there were any plans to deal with the expected increase while at the same time guaranteeing the humane treatment of prisoners. A number of non-governmental organizations had reported that the conditions in some maximum security prisons or units were particularly serious. He wished to know whether there were special regulations governing such prisons and what was done at the administrative level to ensure that federal and state maximum security prisons complied with the demands of the Covenant.

8. With regard to the stipulation in article 7 of the Covenant relating to consent to medical or scientific experimentation, he observed that although paragraphs 178-187 of the report indicated that the federal Food and Drug Administration permitted the use of unapproved drugs in experimental research under certain conditions, there was no indication as to what those conditions were. The reporting State should indicate whether any federal or state regulations allowed surrogate consent for participation by minors or mental patients in experiments which had no prospect of direct therapeutic benefit to the minors or patients themselves, as well as what measures were taken to ensure that there would be no violation of article 7 where federal regulations did not apply and no parallel state regulations existed. As to the victims of radiation experiments conducted and sponsored by the United States Government (para. 182), it was his understanding that the compensation of victims was expected to be limited and, in most cases, civilian victims would not be receiving compensation. He requested clarification on that point.

9. Mr. FRANCIS commended the reporting State on its excellent initial report and said he wished to focus on compliance with article 6 of the Covenant. Drawing attention to paragraphs 147 and 148, he said he found the assertion in the latter paragraph that approximately half the states had adopted legislation permitting juveniles aged 16 and older to be prosecuted as adults when they had committed the most egregious offences to be a questionable judicial proposition which did not constitute a sound basis for the reservation contained in that paragraph. To deem a fiction a fact in the application of criminal law was not justified. However, to apply the deemed fact in such a way as to invoke the death penalty against young persons to whom it had not previously applied was extremely unfortunate and undesirable, all the more so because the introduction to the report presented sufficient facts on the basis of which an acceptable reservation could have been formulated.

10. He noted that in Stanford v. Kentucky the four dissenting Supreme Court Justices had deemed the execution of an offender under 18 years of age to be disproportionate and unconstitutional, that 27 states did not favour the application of the death penalty to juveniles under the age of 17 years, that its application to those committing capital offences at ages 16 and 17 was the subject of continuing debate in the United States, and that the voting age in the United States was 18 years. Bearing all of that in mind, he wished to know whether the existing situation offered favourable prospects for a joint initiative by the states and the federal Government to establish 18 years as the minimum age at which the death penalty would be applicable.

11. Mrs. HIGGINS praised the reporting State for its excellent and comprehensive initial report and said that she had found the historical information particularly useful.

12. Turning first to questions relating to self-determination, she referred to paragraph 14 and inquired how frequently referenda were held to determine the relationship between the United States and the Commonwealth of Puerto Rico, Guam and the United States Virgin Islands in order to ensure that opportunities for self-determination occurred on an ongoing basis.

13. Drawing attention to paragraph 26, she wished to know why native Hawaiians were not a federally recognized group, whereas the Alaskan natives were. With reference to paragraphs 27, 28, 52 and 53, she wished to know what the limits were to the concept of self-identification and requested an explanation of "legislatively determined" recognition as opposed to "judicially determined" recognition. The reporting State should indicate what action a group which perceived itself as meeting the criteria for recognition outlined in paragraph 53 could take when they were told that they did not in fact do so. An explanation was also needed of the statement in paragraph 45 that a tribe's authority to regulate land use within the boundaries of its territories had been found to vary depending on the character of the territory.

14. Paragraph 63 indicated that Congress could recognize or extinguish aboriginal Native American rights and that there was no obligation to pay compensation when such rights were extinguished. She wished to know what guarantees existed to ensure that federally recognized status, once given, would be more than ephemeral and whether it was possible for the rights of other groups to be extinguished without compensation. She would appreciate knowing whether paragraph 70 implied that fishing and hunting rights were not available outside the lands made available to Alaskan natives under land-settlement arrangements.

15. Referring to paragraph 31 of the report, which highlighted the high instance of poverty, sickness and alcoholism among Native Americans, she asked whether the Self-Governance Demonstration Project which had been directed at alleviating those problems had yielded any results and whether there were any new income-producing possibilities for Native Americans other than casinos. The reporting State should explain if comparable programmes existed for Afro-American and Latino groups aside from efforts to improve education.

16. With regard to de facto segregation in education, the Committee wished to know how many ethnically divided schools there were and to learn more about the current policy on de facto discrimination. Details as to why the Racial Justice Act, the purpose of which had been to ensure that there was no racial bias in the application of the death penalty, had been dropped from the Crime Bill would be welcome.

17. Turning to the section of the report on equal protection of rights in the Covenant (paras. 77-100), she said that the last sentence of paragraph 84 required clarification, as it seemed to imply that it was acceptable to sterilize persons convicted of grand larceny but not embezzlers. The Committee would also appreciate additional information regarding affirmative action programmes and whether the opportunities those programmes were intended to ensure had been guaranteed. Paragraph 100 stated that the United States understood that certain distinctions with regard to equal participation of rights in the Covenant were to be permitted when they were rationally related to a legitimate governmental objective, whereas the Committee's formula specified that distinctions must be reasonable, objective and related to a legitimate purpose under the Covenant. She hoped that the two formulas would amount to the same thing. In that connection, it was unclear why race had been separated out for special treatment in paragraph 821, which stipulated that certain distinctions such as race could be justified only by a compelling governmental interest.

18. The Committee would appreciate additional information regarding language rights in the United States, specifically concerning cases such as the Asian American Business Group v. City of Pomona (para. 825), which appeared to legitimize the "English only" rule in the workplace. Lastly, the reporting State should explain how the difficult policy of bilingual education in schools was being pursued.

19. Mr. BRUNI CELLI commended the United States delegation for submitting a very complete and informative report and welcomed the nomination of Mr. Buergenthal to the Committee.

20. With reference to the section of the report on the right to life (art. 6 of the Covenant), he said it was surprising that the report had devoted only a few paragraphs to the question of the death penalty, whereas paragraph 139 clearly stated that the sanction of capital punishment continued to be strongly debated in the United States. The question of the death penalty was one of the most delicate and controversial human rights issues and a subject which, in the past, had had very negative effects on the enjoyment of fundamental rights and freedoms in the United States as well as in other multiracial societies. In that regard, the reporting State should clarify the grounds on which the report had asserted that the policy to retain the death penalty for the most serious crimes appeared to represent the majority sentiment of the country. To his knowledge, public opinion had not been directly consulted on the subject, by means of a referendum for instance, nor had that issue been the focus of recent electoral campaigns, with a few exceptions. He questioned whether there was not an obvious contradiction between the abolitionist trend which was gaining ground in democratic societies around the world and the restoration of the death penalty, normatively and practically, in the United States of America, which had

placed civil and political rights at the centre of its existence and which protected human rights in its domestic policy and proclaimed them in its foreign policy. He asked the reporting State to explain that paradox to the Committee. More specifically, he wished to know what legal premises had prompted the Supreme Court of the United States in 1976 to revise its previous interpretation that the death penalty violated the Constitution and to permit its re-establishment. Additional information on the social, ethical and other foundations that were thought to justify the application of the death penalty, especially with regard to minors, should be provided.

21. Mr. BHAGWATI commended the United States of America for ratifying the Covenant and also for nominating Mr. Buergenthal, a distinguished jurist and human rights activist who would most certainly be a great asset to the Committee.

22. He appreciated the highly informative report that had been submitted but noted that it seemed to imply that the United States did not need to change any of its laws because the human rights standards laid down in its domestic law were the most acceptable, and that even if international standards were superior, the United States did not propose to acknowledge them and even rejected them by way of reservations, objections and understandings. He hoped that the dialogue between the Committee and the United States Government would lead to a change of attitude on the part of that Government and ultimately in the withdrawal of its reservations. A well-known principle, accepted in many countries such as the United Kingdom, India and Australia, was that in interpreting domestic law, whether constitutional or ordinary legislation, the courts must take into account international human rights instruments and make domestic law accord with international human rights standards.

23. The reservation which the United States had made to the death penalty for minors between the ages of 16 and 18 was justified in the report on the grounds that the Supreme Court had held that it was not unconstitutional to impose the death penalty on persons over the age of 16. The real issue at stake, however, was not whether that penalty was unconstitutional, but whether it was right for any Government to impose the death penalty on a minor aged 16 or 17 on the grounds that law and order necessitated such a measure. He hoped that the United States would reconsider its position on that matter and asked the reporting State to clarify how many minors between the ages of 16 and 18 had been sentenced to death and how many had been executed since 1976. The Committee would also appreciate the same data with regard to mentally retarded persons.

24. It was accepted that where there was de facto inequality, imposition of de jure equality had the effect of accentuating de facto inequality. Unequals had to be treated unequally in order to produce substantive equality. In that regard, and referring to paragraph 85 of the report, which dealt with affirmative action, he asked how the United States Government expected to raise the status of African Americans, Latinos and other minority groups to the level enjoyed by the majority in the areas of education, employment and health care without affirmative action.

25. The reporting State should clarify why the United States Government, in ratifying the Covenant, had declared that its provisions would be non-self-executing and why it had not allowed the Supreme Court to decide that issue. If domestic law was in conformity with the Covenant, then it was difficult to understand why it was necessary to state it was not self-executing. Ensuring respect for human rights required a strong judicial mechanism, and access to that mechanism must be facilitated. If any impediments existed, it was the duty of the State to help remove them and to provide legal aid to any person whose rights under the Covenant had been violated and who was denied access to justice for lack of money. In that regard, he asked whether the reporting State had established and funded any legal aid scheme to help poor and indigenous persons ensure that their rights under the Covenant were upheld.

26. It was unclear why the Federal Rules of Civil Procedure had been amended to provide mandatory sanctions for parties found to be in violation of rule 11, which dealt with unfounded or groundless actions. He pointed out that under article 10 of the Covenant, prisoners were entitled to receive humane treatment and that the conditions in maximum security prisons in the United States were in violation of that article.

27. Mr. MAVROMMATIS commended the unique contribution made by the United States to international efforts to promote human rights. Although the report under consideration was a very good one, more information would be appreciated on the exceptions to provisions of the Covenant. The considerable number of reservations, declarations and understandings undermined, to a certain extent, the credibility of the reporting State's efforts to encourage respect for international minimum standards in the field of human rights. At a time when there was a trend towards providing more and more protection to citizens, he did not understand why United States citizens should be deprived of extra protection under the Covenant. The report also indicated that the protection of human rights varied from state to state. In that connection, he stressed that the Covenant, over and above the Constitution, should serve to make the overall legal system more uniform.

28. The Committee wished to know what kind of preliminary work had been carried out prior to ratification at both the federal and state levels to ensure compliance with the Covenant and whether there was a continuing effort to bring new laws into conformity with the international obligations of the United States. State law, for example, varied with regard to the imposition of the death penalty and treatment of homosexual practices in private. Article 6 of the Covenant, however, pointed in the direction of the complete elimination of the death penalty. The reporting State should specify what methods of execution were used and provide a list of crimes for which the death penalty could be imposed under federal and state legislation.

29. It would be interesting to know what the reporting delegation felt about the question of the sale of weapons in the context of the right to life. A large number of persons were killed by the police in the discharge of their duties. The United States should indicate whether it subscribed to international rules on the use of firearms by security forces and whether the rules on the use of minimum force by policemen varied from state to state.

30. Referring to article 7 of the Covenant, he pointed out that the overcrowding of prisons in the United States was very serious and was bound to increase. With regard to freedom from imprisonment for breach of contractual obligation under article 11 of the Covenant, he inquired whether a person could be held in contempt of court and sentenced to prison for non-compliance with a specific performance order. Lastly, although the United States judiciary was exemplary in many respects, he felt that the election of judges was not the best method to ensure their impartiality; frequent elections compounded that problem.

31. Mr. POCAR commended the United States Government for its contribution to the promotion of human rights and expressed satisfaction with the quality of the initial report, which was very useful in understanding the human rights situation in that country. The question of non-discrimination and equal protection was a sensitive issue in many respects. He was unsure whether the understanding referred to in paragraph 100 of the report was fully in accordance with general comment 18 of the Committee. In that understanding, the United States referred to distinctions permitted when they were rationally related to a legitimate governmental objective. The Committee wished to know what was meant by the phrase "a legitimate governmental objective" and whether such an objective was considered legitimate under United States legislation or the Covenant. Under the Covenant, the permissibility of a distinction should be tested on the basis of the legitimacy of the objective as it related to that instrument. It was important, then, to know whether the United States Government felt that article 26 of the Covenant should be taken into account when testing the legitimate objectives of a State.

32. More information would be appreciated on measures taken by the Government to ensure non-discrimination and equal treatment. According to paragraph 87 of the report, the constitutional Equal Protection clauses protected one only against discriminatory treatment by a government entity, or by persons acting "under color of law"; thus the doctrine did not reach purely private conduct in which there was no governmental involvement. The reporting State should explain the types of conduct in which there was no such involvement, since article 26 of the Covenant could also cover private action to a certain extent.

33. He associated himself with the questions already raised concerning discrimination in housing, employment and education. It would be interesting to know what steps were being taken by the Government to bring state legislation which was not in full compliance with the non-discrimination clauses of the Covenant into line with the Covenant in that regard. The reporting State should indicate whether there was any field covered by the Covenant in which the Government would be prevented, because of lack of competence, from making states comply with the Covenant. Involvement by the states in implementing the provisions of the Covenant was an absolute necessity.

34. The imposition of the death penalty in cases involving persons under 18 years of age was not in conformity with international standards, which could be considered part of international customary law. Accordingly, he appealed to the United States Government to withdraw its reservation relating to the death penalty in the near future. It would be interesting to learn what the Government's position was in the national debate on that subject.

35. He associated himself with the remarks made by Mr. Kretzmer on the conditions of detention in some prisons and stressed the need to comply with articles 7 and 10 of the Covenant in that regard. Lastly, he had doubts concerning the compatibility of the reservation to article 7 of the Covenant if the protection afforded by the Constitution was less than that provided by the Covenant, which reflected international customary law in that area.

36. Mr. LALLAH, referring to articles 40 and 50 of the Covenant, asked to what extent the federal states had been consulted before ratification and what systematic steps were being taken to determine whether the laws of individual states were in compliance with the obligations undertaken on their behalf. The report under consideration was excellent as far as it concerned the federal legal system, but the lack of information about the legal practice and laws of the states was a major deficiency. The next periodic report could provide specific information on the particular problems which were found at the state level.

37. There was no indication as to whether the judiciary had been made aware of the United States Government's reservations to the Covenant or whether the Government intended to acquaint judges with its obligations under the Covenant. He hoped that the judiciary would be made aware of the provisions of the Covenant and the evolving standards resulting from its implementation. It would be interesting to know whether the Supreme Court had had an opportunity to pronounce itself on the non-executing nature of the Covenant. The reporting State should indicate whether an executive decision that a treaty was non-self-executing was binding on the Supreme Court or whether it was up to the Court to determine that.

38. With regard to the right to life, protected under article 6 of the Covenant, he saluted the new United States commitment to outlawing the execution of pregnant women (para. 148); the laws in that respect must now be changed. Yet the United States currently led the world in the execution of juveniles. The Government must take into account the ethos evolving throughout the world away from the death penalty. That was especially important in a country like the United States, with its chequered history of bias against certain minorities. Before the New York State Legislature had reached its final decision to reinstate the death penalty, for instance, it might have made a difference if the federal Government had made those lawmakers aware of the Government's new commitments under the Covenant, even taking into account the reservations.

39. Concerning the right to compensation under article 9, paragraph 5, and article 14, paragraph 6, of the Covenant the United States understanding (para. 258) indicated that entitlement to compensation might be subject to the reasonable requirements of domestic law. The nature of such requirements was unclear. Under the Covenant, the right was absolute, and only the extent of compensation might vary.

40. With regard to the right to counsel (paras. 213, 416 and 431), he would like more information on how the indigent, especially those facing the death penalty, were guaranteed competent counsel. Amnesty International, for instance, had reported a number of death-penalty cases in the United States in

which those convicted had been defended by court-appointed lawyers totally inexperienced in capital cases, a crucial and fatal disadvantage for the accused.

41. Regarding the independence of judges, the merit selection system (para. 381) should be encouraged, since the social pressure of re-election might affect the purity of justice.

42. With reference to access to the political system under article 25, it was unclear how difficult it was for United States voters to register, and also what percentage of those entitled to vote were in fact registered. No democracy could succeed if the majority of the electorate was not on the books. Noting that 30 African Americans had been elected to the Congress, he asked if the reports were accurate that there were plans to redraw certain voting districts in order to limit African American constituencies.

43. Although money was classified as a form of speech under the First Amendment (para. 585), he wondered if it should be so viewed as there were apparently no limits on campaign expenditures, and United States citizens must surely be inordinately influenced by the rich in that regard. With reference again to the First Amendment, he supported Mr. Klein's plea, based on article 20, paragraph 2, of the Covenant, to elevate racial hatred to the level of obscenity under the laws, since racial discrimination resulted in enormous human rights violations. Lastly, he wished to know whether discrimination on the grounds of political opinion or, where housing was concerned, on the grounds of sexual orientation, was punishable by law.

44. Mr. PRADO VALLEJO expressed concern that one United States reservation (para. 148) reserved the right to impose capital punishment under future as well as existing laws, and on persons below 18 years of age. That reservation could run counter to articles 6 or 7 of the Covenant.

45. Mr. ANDO asked whether, on the basis of the 1967 United Nations Protocol relating to the Status of Refugees, the Government had made any arrangement with the United Nations High Commissioner for Refugees on how asylum seekers or refugees were to be handled.

46. Mrs. MEDINA QUIROGA asked, in relation to article 25 of the Covenant, whether it was true that the inhabitants of Washington, D.C. were denied certain political rights such as the right to vote, and if so, why.

47. Two shocking incidents had recently revealed gender bias by judges against women - one condoning violence against unfaithful spouses and the other condoning rape - and she wished to know whether there had been any government reaction.

48. Mrs. EVATT asked how responsibilities were divided between the federal and the state governments in settling human rights questions involving children born outside of marriage and non-citizen children (paras. 700 and 701). She was thinking in particular of Proposition 187, recently adopted in California.

49. Regarding the equality of women before the law, it would be interesting to know if there were any institutions at the state level comparable to the Federal Judicial Center (para. 375) or any federal/state cooperation to provide continuing training for judges. There was clearly a need for the education of judges on gender issues, especially since gender bias was sometimes built into the law.

50. Mr. MAVROMMATIS associated himself with Mr. Pocar's comments regarding the danger of allowing distinctions related to a legitimate governmental objective, since such distinctions could open the way to abuse unless restricted by case law or interpretation. Like others, he would appreciate more information on factors and difficulties affecting the enjoyment of human rights in the United States, the new corporal punishment in respect of children, and death-row conditions. Regarding the latter, the Committee's position was that a long stay on death row, when coupled with other factors, could constitute cruel, inhuman or degrading treatment or punishment. In general, the Committee was against cut-off dates, but surely a stay on death row of almost 20 years had to be taken into consideration before a prisoner was executed.

51. Mr. FRANCIS, noting that apparently only 13 to 14 persons were executed each year out of the approximately 2,500 on death row in the United States, asked whether that slow pace was determined by the appeals process or by a reluctance to execute.

52. Regarding possible reform of the informal prison system, he wondered if there was any system for inspecting the conditions of convicts doing work while in prison to ensure that it was not what might be regarded as forced labour under article 8 of the Covenant. Also, newspaper reports of a recent sensational trial indicated that the accused had been sentenced to life imprisonment during which he would be deprived of access to radio or television, and he asked whether those were normal conditions for life imprisonment.

53. The CHAIRMAN, speaking in his personal capacity, associated himself with the remarks of Mr. Klein and Mr. Lallah regarding the United States reservation to article 20. He, too, believed that racial hatred should be elevated to the rank of obscenity as a punishable crime, and he opposed the imposition of the death penalty on minors.

The meeting rose at 5.55 p.m.